

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/25/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-090726

FILED: \_\_\_\_\_

CITY OF TEMPE

CLIFFORD L MATTICE

v.

JOSEPH TOWNSEND

JOSEPH TOWNSEND  
ASPC-LEWIS-BARCHEY UNIT  
PO BOX 3200  
TUCSON AZ 85326-0000

REMAND DESK-SE  
TEMPE JUSTICE CT-EAST

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since and this Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court, and the Memoranda submitted by the parties and counsel.

Appellant has filed several motions which include a Motion to Strike Appellee's Memorandum and a Motion for Order Entering Judgment for Appellant.

Good cause not appearing in those requests,

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IT IS ORDERED denying the motions.

In his memorandum on page 4, Appellant requests that this court take judicial notice of Maricopa County Superior Court's CR2000-094885 and all documents contained within that file. Unfortunately, this court cannot do that as this is not a new trial where this court receives new evidence that was not considered by the trial court.

IT IS THEREFORE ORDERED denying Appellant's request.

1. Facts

Appellant was arrested August 31, 2000 and charged with Sale of Methamphetamines within the city of Tempe. At the time of Appellant's arrest, Tempe Police officers seized numerous items of evidence that included weapons, baggies, pagers and a cell phone, cash, and baggies. Notice of Pending Forfeiture of all of the items seized was sent to Appellant by certified mail on November 30, 2000. Notice was given to Appellant by mailing to his last known address and his brother's home (the forwarding address Appellant left with the post office). Appellee also published this notice in two newspapers of general circulation. The justice court granted Appellee's Application for an Order of Forfeiture on March 21, 2001 when Appellant failed to timely object.

Appellant filed a Motion to Vacate the Order of Forfeiture on January 14, 2002 (Appellant incorrectly dated his motion January 14, 2001, but it appears to have been filed by the East Tempe Justice Court January 17, 2002). This motion was denied January 17, 2002.

2. Appellee has complied fully with the requirements of A.R.S. 13-4301 et seq.

Appellee has complied fully with the requirements of A.R.S. Section 13-4301 et seq., and the trial court did not err in

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summarily denying Appellant's Motion to Vacate the Order of Forfeiture of March 21, 2001.

a. Notice of the Forfeiture was timely filed.

Appellant argues that the State (Appellee herein) failed to initiate the forfeiture proceedings within 60 days of the property seizure. A.R.S. Section 13-4308(B) provides in pertinent part:

If the State fails to initiate forfeiture proceedings against property seized for forfeiture by notice of pending forfeiture within 60 days after its seizure for forfeiture... such property shall be released from its seizure for forfeiture on the request of an owner or interest holder, pending further proceedings pursuant to this chapter....

The phrase "seizure for forfeiture" is critical to an understanding of Arizona's forfeiture laws. "Seizure for forfeiture" is defined in A.R.S. Section 13-4301(9):

"Seizure for forfeiture" means seizure of property by a peace officer coupled with an assertion by the seizing agency or by an attorney for the State that the property is subject to forfeiture.

The State first asserted that the property seized from Appellant was subject to forfeiture on November 21, 2000 in its Notice of Seizure for Forfeiture which was attached to the application for an order of forfeiture filed with the East Tempe Justice Court. It further appears that the notice of pending forfeiture was mailed to Appellant well within the time limit required by A.R.S. Section 13-4308(B). It appears that the notice was mailed to Appellant within ten days of the filing of

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the State's official Notice of Intent to Forfeit Appellant's Property. The trial court could have clearly concluded that Appellant's arguments that the time limits of A.R.S. Section 13-4308(B) were without merit, as does this court.

- b. Appellant was provided notice pursuant to A.R.S. Section 13-4307.

Appellant also complains about the notice, or the alleged lack thereof, he received regarding the pending forfeiture. A.R.S. Section 13-4307 provides for notice to be accomplished in several different ways. When the State knows the property owner's name and current address, notice may be accomplished by personal service or by mailing a copy of the notice by certified mail. The notices in this case were served by certified mail to Appellant's last known address and the address of his brother (his forwarding address left with the post office). Additionally, the State provided notice to Appellant by publication pursuant to A.R.S. Section 13-4307(3). Appellant's arguments that notice was insufficient as a matter of law are without merit.

- c. There was probable cause for the seizure and forfeiture of Appellant's property.

A.R.S. Section 4308(A) requires as a prerequisite for the initiation of forfeiture actions, that the State determine whether probable cause exists that the property seized is subject to forfeiture. Within the application for forfeiture is a verified description of Detective Rob Mitchell's observations of the location of the property within close proximity to 143 grams (over 5 ounces) of methamphetamines. Clearly probable cause pursuant to A.R.S. Section 13-4305 existed for the Tempe Police to seize Appellant's property.

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3. Conclusion

The trial judge did not err in denying Appellant's Motion to Vacate the Order of Forfeiture of March 21, 2001. Clearly Appellant's contentions were totally without merit and the trial judge acted properly to deny Appellant's motion.

IT IS THEREFORE ORDERED affirming the Forfeiture Order of March 21, 2001 and the trial judge's order of January 17, 2002 denying Appellant's Motion to Vacate Order of Forfeiture.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court for all further and future proceedings in this case.